

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

OFELIA COLOYAN, )  
Plaintiff, ) CIVIL NO. CV03-476 KSC  
vs. )  
WILLIAM P. BADUA; JEFFREY OMAI; )  
SPENCER ANDERSON; NEIL PANG; and )  
DOES 5-10, )  
Defendants. )

DEPOSITION OF BYRON ELIASHOF, M.D.

Taken on behalf of the Defendants at 615 Piikoi Street,  
Suite 1509, Honolulu, Hawaii, commencing at 2:35 p.m. on  
February 23, 2006, pursuant to the Federal Rules of Civil  
Procedure.

BEFORE: SHEILA BRITT LIPTON, CSR NO. 257  
Notary Public, State of Hawaii

HONOLULU REPORTING SERVICES

1000 Bishop Street, Suite 401  
Honolulu, Hawaii 96813

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APPEARANCES:

For the Plaintiff: JACK SCHWEIGERT, ESQ.  
550 Halekauwila Street  
Room 309  
Honolulu, Hawaii 96813  
For the Defendants: MARIE MANUELE GAVIGAN, ESQ.  
KENDRA K. KAWAI, ESQ.  
Deputies Corporation Counsel  
City & County of Honolulu  
530 South King Street  
Honolulu, Hawaii 96813  
Videographer: Dina Davenport

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(Whereupon the disclosure was presented to counsel.)

BYRON ELIASHOF, M.D.,

called as a witness by and on behalf of the Defendants,  
having been first duly sworn, was examined and testified  
as follows:

EXAMINATION

BY MS. KAWAI:

Q. Good afternoon, Doctor. Could you please state  
your name and address, business address, for the record.  
A. My name is Byron A. Eliashof. My address is  
Suite 1509, 615 Piikoi Street, Honolulu, Hawaii.  
Q. Are you a resident of Honolulu?  
A. Yes.  
Q. What is your profession?  
A. I'm a psychiatrist.  
Q. What is your educational background?  
A. I have an undergraduate degree from Yale  
University, graduated in 1956, majoring in history. I  
attended the Albert Einstein College of Medicine in New  
York, graduated in 1961. After that I took an internship  
in pediatrics at New Haven Medical Center. Following that  
I took a residency in psychiatry at the Harvard Medical  
School.

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1 Q. As a result what degrees did you earn?  
 2 A. **I have an M.D. degree, Doctor of Medicine. And**  
 3 **after I completed my residency I did additional study, and**  
 4 **passed the necessary examinations so that I am board**  
 5 **certified in psychiatry and neurology, emphasizing**  
 6 **psychiatry.**

7 Q. Do you hold any licenses?

8 A. **My license to practice medicine is in the state**  
 9 **of Hawaii.**

10 Q. When did you first obtain your license to  
 11 practice in the state of Hawaii?

12 A. **I obtained my license in 1965.**

13 Q. And currently is your license still active --

14 A. **Yes.**

15 Q. -- in the state of Hawaii?

16 Beyond medical school have you had any other  
 17 particular training?

18 A. **In addition to the years of studying psychiatry,**  
 19 **I've had many other courses, seminars, workshops, reading,**  
 20 **study groups. I think that covers it.**

21 Q. Do you have any special interest in psychiatry?

22 A. **I am in the general practice of psychiatry. My**  
 23 **interest has varied over the years. At the present time I**  
 24 **treat patients with a variety of disorders, mainly the**  
 25 **spectrum of anxiety and depression and adjustment**

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1 problems, and also chronic pain. I also have an interest  
 2 in forensic psychiatry. And my focus there is primarily  
 3 on psychiatric injury or psychiatric impairments and  
 4 disability.

5 Q. Could you explain to us what forensic psychiatry  
 6 is?

7 A. **It's the area where psychiatry and the law**  
 8 **intersect. And there are many areas where there is an**  
 9 **overlap. An example would be this case, where Ms. Coloyan**  
 10 **is alleging a psychiatric injury as a result of an**  
 11 **incident that occurred.**

12 Sometimes there is instances where someone has  
 13 had a physical injury, such as a back injury, and they  
 14 develop psychiatric problems as a result of that.

15 Sometimes it's a more dramatic injury, such as someone  
 16 being held up in a bank, being threatened with a gun.

17 These are the areas that I do most of my work in.

18 Other areas where the law and psychiatry  
 19 intersect are, for instance, testamentary capacity,  
 20 competence to stand trial. Competence apparent in divorce  
 21 issues. In a variety of other kinds of issues. Issues of  
 22 psychiatric malpractice.

23 Q. How long have you been doing forensic psychiatry?

24 A. **About 25 years. This has been part of my**  
 25 **practice.**

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1 Q. And you mentioned that part of your practice is

2 treating patients. Can you go into a little bit more  
 3 detail what is the nature of your practice?

4 A. **The practice at the present time focuses on**  
 5 **adults. I started off working with children and**  
 6 **adolescents. And over the years my interest changed and**  
 7 **moved toward, more toward adolescents and now adults.**

8 **If I think of some of the patients I'm treating**  
 9 **now, they are either suffering from depression or anxiety**  
 10 **or they have a phobic disorder, or they have an obsessive**  
 11 **compulsive disorder, or they might have a bipolar manic**  
 12 **depressive type disorder. These are the kinds of**  
 13 **diagnostic categories. I don't know if that answers your**  
 14 **question.**

15 Q. Yes, it does. Thank you.

16 Have judges qualified you as an expert in any  
 17 particular field?

18 A. **Yes. In the area of forensic psychiatry.**

19 Q. And how many times have you been qualified as an  
 20 expert in forensic psychiatry?

21 A. **I would estimate maybe 200 times.**

22 Q. And these judges that qualified you as an expert,  
 23 were they all within the Hawaii state -- or the Hawaii  
 24 court system?

25 A. **Yes.**

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1 Q. Have you testified in court as an expert in the  
 2 field of forensic psychiatry?

3 A. **Yes.**

4 Q. Approximately how many times?

5 A. **About 80 to 90, 80 to 100 times.**

6 Q. Where has your testimony taken place?

7 A. **It's been in the circuit court, in the district**  
 8 **court, in the federal court, and the Department of Labor**  
 9 **at the appeals board.**

10 Q. And have you -- Let me take a step back. Are  
 11 these for civil or criminal matters or both?

12 A. **They have been almost all for civil matters.**  
 13 **There have been very few criminal matters that I've**  
 14 **testified on.**

15 Q. And for the civil matters have you testified for  
 16 plaintiff or defendant or both?

17 A. **I've testified for both. I would say that the**  
 18 **breakdown would be about 80 percent for the defense and**  
 19 **about 20 percent for plaintiffs.**

20 Q. What associations do you hold a membership?

21 A. **I belong to the Hawaii Psychiatric Medical**  
 22 **Association, the American Academy of Psychiatry and the**  
 23 **Law, the American Association of Disability Evaluating**  
 24 **Physicians, and the Hawaii Medical Society, and also the**  
 25 **Honolulu County Medical Society.**

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1 Q. Do you attend any seminars?

2 A. Yes.

3 Q. And what type of seminars do you attend?

4 A. The seminars vary. Some of them are on clinical

5 topics such as depression, bipolar disorder, treatment of

6 phobic disorders. And some of them focus on forensic

7 issues such as evaluation of plaintiffs, claimants,

8 assessment of credibility. These are the kinds of issues

9 that my seminars have addressed.

10 Q. What professional journals, magazines, or other

11 periodicals do you read on a regular basis as part of your

12 profession?

13 A. I read the American Journal of Psychiatry, the

14 Annals of Psychiatry, the Archives of Psychiatry, the

15 Journal of the American Academy of Psychiatry and the Law.

16 And then there's a variety of other secondary periodicals

17 that I also read.

18 Q. Do you regularly read any such publications

19 regarding forensic psychiatry?

20 A. The only one that I read in that area regularly

21 is the Journal of the American Psychiatry and the Law.

22 Q. Have you written any such articles on forensic

23 psychiatry?

24 A. The articles that I've written in the area of

25 psychiatry have to do with the topics of stress and pain

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1 disorders.

2 Q. And the areas you've just discussed, would they

3 cover regarding emotional and mental disturbances?

4 A. Yes. I have them listed in my curriculum vitae

5 if you want to look at the titles.

6 Q. In your work as a forensic psychiatrist do you

7 consult with plaintiffs and defendants?

8 A. Yes.

9 Q. Can you give a percentage of times that you

10 consulted for plaintiffs?

11 A. I would break that down to be about 20 percent of

12 the time.

13 Q. And for defendants?

14 A. About 80 percent.

15 Q. Have you been retained by an attorney or

16 attorneys in the office of the corporation counsel for any

17 other cases?

18 A. Yes.

19 Q. How many times?

20 A. I would estimate about five or six times over the

21 years.

22 Q. Have you been retained by any attorneys with

23 regards to cases against the city?

24 A. Yes.

25 Q. How many times?

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1 A. I would estimate about two or three times.

2 MS. KAWAI: At this time I would turn it over to

3 Mr. Schweigert if he has any voir dire.

4 MR. SCHWEIGERT: Thank you.

5 VOIR DIRE EXAMINATION.

6 BY MR. SCHWEIGERT:

7 Q. Doctor, I represent Ms. Coloyan.

8 A. Yes.

9 Q. And I have just a few questions, if I can. I

10 notice that you say you do still treat patients. On

11 average how many patients are you treating?

12 A. I would say about a dozen.

13 Q. At the present time?

14 A. Yes.

15 Q. Is this down from what maybe was a workload ten

16 years ago?

17 A. It's down from a workload of about six years ago.

18 Q. Oh.

19 A. When I -- I started to retire when I was 65, and

20 decided that I was still enjoying practicing a great deal

21 and didn't want to quit entirely. So I cut down my

22 practice. And I'm seeing fewer patients, and doing fewer

23 forensic evaluations. But there is a marked drop from

24 what it was say ten years ago.

25 Q. So at any given time you have maybe approximately

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1 12 patients?

2 A. Yes.

3 Q. When you do consulting work, you have done IME's

4 before, I assume?

5 A. Yes.

6 Q. And in the area of doing IME's, the same

7 percentage, 80 percent have been IME's for the defense, 20

8 percent have been IME's for plaintiff?

9 A. Yes.

10 Q. Can you name some of the lawyers that you have

11 worked for in the plaintiff's work?

12 A. Mr. Turbin. It was an attorney who I worked with

13 and sued against the city and county a few years ago. I

14 can't remember his name.

15 Q. Okay. Would you be willing, Doctor, to make a

16 list as you get an opportunity of the doctors that you've

17 done as far as plaintiff's work --

18 A. Yes.

19 Q. -- and defense work for the last four years?

20 A. Okay.

21 Q. And aside from -- I'll let you get that.

22 A. Okay.

23 Q. Aside from the 12 patients that you treat on

24 average now per year, would you consider yourself to be

25 retired with that kind of a base?

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1 A. **Semi-retired.**  
 2 Q. Of those IME's that you do, how many IME's would  
 3 you do a year?  
 4 A. **I have 12 patients in my caseload at any given**  
 5 **time like on a weekly basis or every other week basis.**  
 6 **IME's, I do about two a month.**

7 Q. And when you do the IME's is it still the 20/80  
 8 percent basis?

9 A. **Yes.**

10 Q. And I noticed, Doctor, I have to ask these  
 11 questions about rates and things like that because money  
 12 can sometimes influence, I noticed you charge 675 per  
 13 hour?

14 A. **For depositions and testimony in court, that's**  
 15 **correct.**

16 Q. When you do IME's is that also 675 an hour?

17 A. **Well, the time spent for interviewing the**  
 18 **patient, reviewing records, preparing the report,**  
 19 **conferences, other kinds of out of court time is \$450 an**  
 20 **hour.**

21 Q. When you treat patients you're not talking that  
 22 kind of money, or are you talking about that kind of  
 23 money?

24 A. **No. When I treat patients the fee is less.**

25 Q. Now, you're currently board certified in  
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1 psychiatry?

2 A. **Yes.**

3 Q. And is there a sub-specialty of that you have  
 4 been board certified in, or just the term psychiatry  
 5 covers it?

6 A. **Well, there is a general board in psychiatry**  
 7 **where I'm certified. And then there are various**  
 8 **subspecialties, like addiction psychiatry, child**  
 9 **psychiatry, forensic psychiatry. I'm not board certified**  
 10 **in any of those subclinical fields.**

11 Q. So it would be just the general term of  
 12 psychiatry then?

13 A. **Yes.**

14 Q. How long have you been board certified?

15 A. **Since about 1967.**

16 Q. Now, in this case how were you contacted to be  
 17 someone to do an IME?

18 A. **I was contacted by telephone. And I don't**  
 19 **remember exactly who called me. It was someone from Ms.**  
 20 **Kawai's office.**

21 Q. Was there a letter that went out first or was it  
 22 just a phone call?

23 A. **To the best of my recollection there was first a**  
 24 **telephone call and then it was followed up by a letter.**

25 Q. And do you have that letter with you?

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1 A. **I don't know.**

2 Q. Okay.

3 A. **I'll look.**

4 Q. Thank you.

5 I notice you are looking at a file. Would this  
 6 be your entire file?

7 A. **Yes.**

8 Q. Would you mind at the completion of the depo,  
 9 maybe I should take a look at it now because I have not  
 10 seen it, make a copy of this record and file for the  
 11 deposition?

12 MS. KAWAI: At this time is this still continued  
 13 within the voir dire? Because we haven't even begun the  
 14 direct examination.

15 MR. SCHWEIGERT: Right.

16 THE WITNESS: Do you want to see the entire file  
 17 or the letter that came confirming --

18 MR. SCHWEIGERT: Engagement letter.

19 MS. KAWAI: This is trial testimony though, isn't  
 20 it?

21 MR. SCHWEIGERT: What's the purpose?

22 MS. KAWAI: This is not a discovery deposition.

23 Can we go off the record real quick.

24 THE VIDEOGRAPHER: We're off the record at 2:53.

25 (Discussion held off the record.)

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1 THE VIDEOGRAPHER: On the record at 2:57.

2 MR. SCHWEIGERT: Based on the agreement of the  
 3 parties I'm going to stop my further voir dire at this  
 4 time. And I'll bring it up, Doctor, when I have an  
 5 opportunity to cross-examine you --

6 THE WITNESS: Okay.

7 MR. SCHWEIGERT: -- so we can make it more  
 8 expeditious.

9 MS. GAVIGAN: Thank you.

10 MS. KAWAI: Thank you.

11 Q. Doctor, Mr. Schweigert just began to ask you  
 12 basic questions about who retained you for this case.

13 A. **Yes.**

14 Q. How long did the examination of plaintiff  
 15 actually last?

16 A. **It was about two and a half hours.**

17 Q. And what was your assignment?

18 A. **My assignment, as I understood it, was to**  
 19 **determine whether Ms. Coloyan had a psychiatric illness or**  
 20 **disorder, what the nature of it was, its duration, and its**  
 21 **cause, and whether she required any additional treatment.**

22 Q. Mr. Schweigert just briefly went over your rates  
 23 that you charge. Are the rates that you just mentioned  
 24 what you charge to any party that wishes to retain you for  
 25 your services?

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1 A. Yes, they're the same.  
2 Q. And did you write a report about your assessment  
3 of plaintiff?

4 A. Yes, I did.

5 Q. I'm going to be handing you what will be marked  
6 as Exhibit No. 1.

7 MR. SCHWEIGERT: Thank you.

8 THE WITNESS: Yes, that's my report dated July  
9 12th, 2005.

10 BY MS. KAWAI:

11 Q. And you recognize that document, correct?

12 A. Yes.

13 Q. And when did you write your report?

14 A. I wrote it between the time that I examined  
15 Ms. Coloyan and the time that it was sent on July 12th.

16 Q. And when did you -- What date did you examine  
17 Ms. Coloyan?

18 A. I made a mistake. I examined her on July 12th.  
19 The report was sent August 10th, 2005.

20 Q. Was your report based on your examination of  
21 plaintiff and review of records?

22 A. It was based on my examination, which included a  
23 history, an assessment of her mental status, an  
24 examination of her and her demeanor as she presented  
25 information to me, psychological testing, and a variety of

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1 records which were provided to me.

2 Q. And you mentioned you reviewed records to  
3 familiarize yourself with plaintiff's medical history,  
4 correct?

5 A. That's correct.

6 Q. What medical records did you review?

7 A. The medical records included the personnel  
8 records from the Castle Medical Center, records from the  
9 Liberty Mutual Group, Ken Davenport, M.D., Steven M.C.  
10 Lum, M.D., the complaint, and the various amended  
11 complaints that were filed.

12 MR. SCHWEIGERT: I'm going to object to that  
13 answer as not being responsive to the question, Doctor. I  
14 believe the question was medical records that you looked  
15 at. You appear to be going beyond that.

16 THE WITNESS: Okay.

17 BY MS. KAWAI:

18 Q. Doctor, I was going to actually split it up in  
19 two questions. In terms of medical records is there  
20 anything else, I guess, with regards to the records you  
21 reviewed except for the Liberty Mutual, Dr. Davenport and  
22 Dr. Lum's records?

23 A. The additional records that I reviewed were the  
24 first amended complaint, the second -- The complaint, the  
25 first amended complaint, the second amended complaint, the

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1 third amended complaint, and the fourth amended complaint,  
2 the plaintiff's response to defendant William Badua's  
3 first request for answers to interrogatories, the  
4 plaintiff's response to defendant William Badua's first  
5 request for production of documents and things to  
6 plaintiff, and the depositions of William Badua, Ofelia  
7 Coloyan, Spencer Anderson, Darren Nihei, Donald Stafford,  
8 Neil Pang, and Detrich Kamakani.

9 Q. What was significant in the records that you  
10 reviewed?

11 MR. SCHWEIGERT: I'm going to object. The  
12 question is vague, general, calls for a narrative.

13 BY MS. KAWAI:

14 Q. Let's split this up into two questions. What was  
15 significant about the medical records that you reviewed,  
16 if any?

17 MR. SCHWEIGERT: Same objection. The question is  
18 vague, ambiguous, general, calls for a narrative.

19 BY MS. KAWAI:

20 Q. You can answer the question.

21 A. The relevance of Dr. Davenport's records was that  
22 it described two injuries from auto accidents that  
23 Ms. Coloyan had. There was minor injury and she  
24 recovered. There did not seem to be any prolonged illness  
25 or magnification of symptomatology, or prolongation of

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1 disability. She seemed to heal and return to her  
2 functions in a way that one might expect given the nature  
3 of the injury.

4 And I felt this was important particularly in  
5 conjunction with the personnel reports that I reviewed  
6 from Castle which described her as a hard working,  
7 conscientious, loyal employee who went over and above what  
8 was called of her or asked of her, was helpful  
9 spontaneously to other workers and staff. And so it was  
10 all consistent with an individual who has integrity and  
11 has a high system of values and ideals for herself.

12 Q. With regards to the non-medical records, what  
13 significant --

14 A. Let me go on. The records of Dr. Lum were  
15 important because they indicated that Ms. Coloyan had had  
16 difficulties with sleep both before and after. This  
17 wasn't the first time. So she seems to be an individual  
18 who, when she's troubled by whatever might be going on in  
19 her life, it affects her sleep.

20 More specifically, with respect to this incident  
21 about which she's complaining, his description of her  
22 statements was consistent with what she told me. He  
23 viewed her as being sufficiently emotionally distressed,  
24 so that he advised her to stay off work for three weeks.  
25 And by the end of that she had recovered. There were no

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1 further entries in his file relating to that incident.

2 And he concurred with her desire to return to work.

3 Q. And with regards -- Are you finished in terms of  
4 the medical records that you reviewed?

5 A. Yes, yes.

6 Q. With regards to the other non-medical records,  
7 which appears to be the pleadings and depositions taken in  
8 this lawsuit, did you find any significance from reviewing  
9 those documents?

10 MR. SCHWEIGERT: I'll note an objection to that  
11 question. Your dealing with non-medical records is a lack  
12 of foundation and competence to talk about, and also  
13 they're hearsay.

14 BY MS. KAWAI:

15 Q. You can answer.

16 A. In reviewing some of the other documents of the  
17 date of when this incident occurred changed several times.

18 MR. SCHWEIGERT: Let me add an additional  
19 objection as to lack of foundation. Competence to talk  
20 about what any mistake, a date or whatever, could have  
21 been caused by. In other words, don't forget the guy that  
22 wrote it, me.

23 THE WITNESS: Well, somewhere there were a number  
24 of mistakes, either from the information that was provided  
25 or in the way it was presented. And I was struck by that.

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1 BY MS. KAWAI:

2 Q. And in terms of the other documents that you  
3 reviewed --

4 A. I want to add at this juncture that I might not  
5 have been as struck by that were it not for the fact that  
6 there were a variety of other inconsistencies that I  
7 encountered in the course of reviewing all the data that  
8 was available. And that was one more part of it without  
9 being certain whether the source was Mr. Schweigert or  
10 Ms. Coloyan.

11 MR. SCHWEIGERT: Adding an additional objection  
12 of speculation for the doctor.

13 THE WITNESS: The deposition of the police  
14 officers who were concerned was significant. They were  
15 all consistent and in agreement --

16 Very melodious, Counsel.

17 MR. SCHWEIGERT: Thank you. I try to keep it  
18 light, Doc.

19 THE WITNESS: -- were in agreement in stating  
20 that they had gone to the house of Ms. Coloyan to serve an  
21 arrest warrant for her son Allan. They specified that  
22 they did not have a search warrant and would not enter  
23 without a search warrant unless they had the backup SWAT  
24 team, with the inherent danger of going into someone's  
25 residence without proper backup.

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1 And, as I said, some of them, what was said, some  
2 of them didn't, but all of them were in agreement in terms  
3 of if they heard what was said they agreed on that, and  
4 that Ms. Coloyan invited them in. That they didn't go in  
5 uninvited.

6 The deposition of Ms. Coloyan was important  
7 because in it she provided a description of what occurred.  
8 She described her reaction along with that of her husband  
9 to what occurred. And once again I noted significant  
10 information as to what was actually the most distressing  
11 aspect of this whole incident. And again noted  
12 inconsistencies.

13 BY MS. KAWAI:

14 Q. Did you make any diagnosis after conducting your  
15 examination of plaintiff?

16 A. The diagnosis was that she had an adjustment  
17 disorder with mixed anxiety and depressed mood.

18 Q. And did you make any other diagnosis in this  
19 case?

20 A. On Axis II, which is the diagnosis of lifelong  
21 disorders, such as a personality disorder or mental  
22 retardation, there was no diagnosis. There was no  
23 indication of retardation. There were no indications she  
24 had a personality disorder.

25 On Axis III, which is the division of the  
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1 diagnostic section that deals with medical problems, there  
2 were no significant relevant medical issues.

3 On Axis IV, which deals with psychosocial and  
4 environmental problems or stresses, there was a  
5 significant problem, and that was her concerns that her  
6 son might be arrested on, possibly on drug related  
7 charges.

8 And on Axis V, which is the section that deals  
9 with the general assessment of functioning, I placed her  
10 at 75, which is fairly high. It indicates that someone is  
11 symptom free unless they encounter stresses which causes  
12 them to have symptoms.

13 Q. In terms of Axis I, what is an adjustment  
14 disorder with mixed anxiety and depressed mood?

15 A. An adjustment disorder is an illness that comes  
16 about in response to some external event in a person's  
17 life. It might be a divorce. It might be losing a job.  
18 It might be, as in this case, being told that, Ms. Coloyan  
19 being told that her son was wanted for arrest on drug  
20 charges.

21 And so it's a reaction to something that's  
22 external and stressful. If it consists of depressive  
23 symptoms, there might be sleeplessness, depressed mood,  
24 loss of appetite, loss of energy, which she reported.

25 The dimension of anxiety is manifest by

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1 difficulty organizing her thoughts, feeling tense, shaky,  
2 being shaky or feeling shaky.

3 She also reported that -- I think those are most  
4 of the -- Excessive worry about her son was a prominent  
5 symptom that was present from the time that the police  
6 came to her house to serve the warrant until sometime  
7 after this event.

8 Q. Is the term adjustment disorder with mixed  
9 anxiety and depressed mood, is that the same terminology  
10 that you would connect with emotional distress?

11 A. Emotional distress is a common lay term. It  
12 doesn't necessarily imply that the distress has been  
13 significant enough to reach the level of a psychiatric  
14 disorder. So someone might be emotionally distressed in  
15 hearing that a child was severely ill, but that wouldn't  
16 necessarily mean that it would rise to the level of a  
17 psychiatric disorder.

18 Because in order to be an adjustment disorder  
19 there has to be an impairment either in one's ability to  
20 work, in one's ability to conduct their relationships, or  
21 their ability to kind of function internally, such as  
22 think clearly, have good judgment. If these are  
23 interfered then we say the person has an adjustment  
24 disorder.

25 Q. And could you briefly describe in terms of

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1 diagnoses what the various axes are for like I, II, III,  
2 IV and V?

3 A. Axis I pertains to a psychiatric illness or  
4 disorder. An example would be a major depressive disorder  
5 or schizophrenia, or in this case an adjustment disorder,  
6 which is in the normal course of things circumscribed and  
7 short-lived.

8 Axis II, which deals with personality disorders  
9 or retardation, it refers to a lifelong kind of problem.  
10 So if someone, for instance, has a passive aggressive  
11 personality disorder all their life, they tend to  
12 procrastinate, express resentment by forgetting things,  
13 doing things improperly, being chronically dissatisfied,  
14 and feeling that they're not adequately acknowledged. And  
15 that's a long, long pattern of the way they view things  
16 and the way they behave. That would be an example of  
17 personality disorder.

18 By Axis III, as I said, could be a medical  
19 illness such as heart disease or diabetes.

20 Axis IV relates to various areas of problems. It  
21 can be in the area of primary relationships, such as  
22 marital relationship, or dissatisfaction with work.

23 And Axis V has to do with their general level of  
24 functioning.

25 Q. What is your opinion as to the primary cause of

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1 plaintiff's adjustment disorder?

2 A. The primary cause was her learning that her son  
3 was -- that there was a warrant for her son's arrest on  
4 drug charges.

5 Q. And what was the basis for concluding that the  
6 primary cause of plaintiff's adjustment disorder was due  
7 to her concern for her son?

8 A. It was based on the manner in which she related  
9 it. She was quite emotional when she talked about it.  
10 You know, it was her facial expression, her body language,  
11 her tone of voices, the number of times that she referred  
12 back to it without my asking her, the way in which it  
13 affected some of her relations with her family and  
14 neighbors.

15 To be more specific, early in my report, on page  
16 2, she made the statement that she knew she had done  
17 nothing wrong, although she was extremely frightened. She  
18 said she was worried for her son because the officer told  
19 her that he was involved with drugs.

20 And at another point, on page 4, she described  
21 having sleepless nights worrying about her son, and to the  
22 point where she called Dr. Lum for medications. Just  
23 above that, she was afraid that someone might be watching  
24 her house to see if her son had returned.

25 At another point she said that when she discussed

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1 it with her children, the family was more -- she was  
2 talking about her decision to file a lawsuit. And said it  
3 was her own idea. And when she talked about it with her  
4 children, they and she were really more concerned about  
5 what was going on with her son. And she said that even  
6 that, she hadn't even told her brothers and sisters that a  
7 warrant was issued for his arrest. She gets together with  
8 them about every other week to spend time. Described a  
9 close relationship with them.

10 In addition to that, she said at another point in  
11 the interview, well, this was in her deposition, she said  
12 that she was worried about him, and that her husband was  
13 worried about him as well. She said that she was  
14 preoccupied primarily with her son and the fact that he  
15 might be arrested in Alaska. And this was really the  
16 issue that she gave, to which she gave a great deal of  
17 emphasis during the interview because not only her anxiety  
18 and concern for him and that he might be arrested, but  
19 also how it would reflect on the family.

20 Q. Did you form any other opinions as to any other  
21 cause of her adjustment disorder?

22 A. She said that she was deeply embarrassed by the  
23 neighbors being told that her son was wanted for arrest on  
24 drug charges.

25 Q. In terms of the embarrassment, what was -- what

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1 is the basis on which you offer that opinion?

2 **A. She said on page 3, I have reference to her**  
 3 **adding that before the policemen left, according to her,**  
 4 **they said that they had talked to her neighbors about**  
 5 **Allan. And she said that she was extremely ashamed by**  
 6 **this. On page 4 I refer to her having said that she**  
 7 **hadn't had any conversations with the neighbors about this**  
 8 **incident, and again repeated she was very embarrassed by**  
 9 **it.**

10 **Q. Doctor, in addition to, I guess, the**  
 11 **embarrassment with her neighbors, was she embarrassed to**  
 12 **relate the incident to anyone else?**

13 **A. Her brothers and sisters. She did discuss it**  
 14 **with her husband that night when he came home and she did**  
 15 **discuss it with her children. She did not discuss it with**  
 16 **her neighbors.**

17 **Q. Is it your opinion that she was embarrassed in**  
 18 **general about what other people might think of her if they**  
 19 **learned about the arrest warrant for her son?**

20 **MR. SCHWEIGERT: Objection. The question is**  
 21 **leading, compound.**

22 **THE WITNESS: Would you repeat the question?**

23 **BY MS. KAWAI:**

24 **Q. Is it your opinion that plaintiff was embarrassed**  
 25 **in general about what people thought about her or how they**

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1 saw her?

2 **A. Her temperament is that she's the kind of**  
 3 **individual who in general is concerned about what other**  
 4 **people think of her. It's reflected in her behavior.**  
 5 **It's reflected on the psychological testing, where there**  
 6 **were a number of statements indicating this. And it's**  
 7 **reflected in her statements that she was highly**  
 8 **embarrassed that people would have even seen police at her**  
 9 **house, much less know that her son was wanted to be**  
 10 **arrested on drug charges. And not even telling her own**  
 11 **brothers and sisters about it.**

12 **Q. Is there any other opinions that you formed as a**  
 13 **cause of plaintiff's adjustment disorder?**

14 **A. Yes. She was distressed by having the police**  
 15 **there.**

16 **Q. And what was the basis on which you offer that**  
 17 **opinion?**

18 **A. She referred at one point, I've forgotten her**  
 19 **exact words, but something to the, they were all over the**  
 20 **place, referring to the fact that they had searched her**  
 21 **house. And she felt embarrassed by this. She made one or**  
 22 **two other statements to the effect she was embarrassed by**  
 23 **having police come to her house. So that I felt that that**  
 24 **was, in my opinion that was an additional source of stress**  
 25 **for her.**

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1 **Q. Why is it that you labeled this cause of her**

2 **adjustment disorder as of less importance than the other**  
 3 **two opinions that you listed?**

4 **A. It was because of the manner and the intensity**  
 5 **that she had in her demeanor when she was describing her**  
 6 **worry about her son and staying up at night worrying about**  
 7 **him. Talking about it with her husband. The fact that**  
 8 **she made a point of avoiding or mentioning it to her**  
 9 **brothers and sisters, with whom she's quite close. Her**  
 10 **statement that she felt uncomfortable with the neighbors**  
 11 **because of her son.**

12 **And, as I've already said, according to her this**  
 13 **was on her mind a great deal of the time afterward. And**  
 14 **from the manner that she presented this, that this was**  
 15 **first and foremost disturbing issue for her.**

16 **Q. Did plaintiff tell you that she became**  
 17 **increasingly angry after the incident when she thought**  
 18 **about what had happened?**

19 **MR. SCHWEIGERT: Objection. Leading.**

20 **MS. KAWAI: Let me rephrase.**

21 **Q. Did plaintiff at any time during your interview**  
 22 **tell you she became angry after the incident?**

23 **MR. SCHWEIGERT: Same objection. That's the same**  
 24 **question. You didn't even change your question.**

25 **MS. KAWAI: I did. I did rephrase it a little**

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1 bit.

2 **MR. SCHWEIGERT: Same objection. Leading**  
 3 **question. I'm sorry.**

4 **THE WITNESS: Shall I answer it or wait for you**  
 5 **to rephrase it?**

6 **MS. KAWAI: I'm going to rephrase.**

7 **Q. Doctor, what, if anything, did plaintiff tell you**  
 8 **about how she felt after the incident on June 3rd, 2003?**

9 **A. She said she was, in addition to feeling**  
 10 **frightened and worried for her son, she was angry because**  
 11 **the police asked the same questions more than once,**  
 12 **several times in terms of inquiring about where her son**  
 13 **was. And she felt they didn't believe her, otherwise they**  
 14 **wouldn't have asked her more than once. She said that**  
 15 **made her angry.**

16 **She said that after they left and she thought**  
 17 **about what had happened, that her house had been entered**  
 18 **without a warrant, she became angry at that. And**  
 19 **according to her, Officer Badua, when she questioned his**  
 20 **coming into the house, according to her he said this badge**  
 21 **is enough. And she felt that this was high handed. And**  
 22 **this also angered her. And she said as time went on she**  
 23 **thought about this some more and became increasingly**  
 24 **angry.**

25 **Q. Did you form any opinion as to why she became**

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1 angry?

2 A. She --

3 MR. SCHWEIGERT: I'll note an objection. The  
4 question goes beyond the scope of the report, therefore,  
5 it's an improper area.

6 MS. KAWAI: Actually on page 35 of his report he  
7 actually refers to various issues of why she was angry.

8 MR. SCHWEIGERT: It talks about why she was  
9 angry? It goes into the cause of her anger? I don't  
10 recall that, Counsel. Which page?

11 MS. KAWAI: Page 35.

12 MR. SCHWEIGERT: And your point is? I'm not  
13 discounting the word that she felt angry in the report.  
14 I'm not questioning that. You are asking him what is the  
15 source of the anger. And that goes beyond the scope.

16 THE WITNESS: I've referred to that on page 35 at  
17 the top.

18 BY MS. KAWAI:

19 Q. You can just answer. Go ahead.

20 A. She said that the more she thought about the  
21 incident, she believed that her rights had been violated.  
22 And she was angry about that.

23 And later on, or at some point in the interview  
24 when I asked her what she hoped to accomplish with this  
25 legal action, she said that she hoped that she would be

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1 compensated for the suffering she had experienced, and  
2 that, she put it, she wants her rights to be acknowledged.  
3 By that I took her to mean that she wants there to be an  
4 acknowledgment that her civil rights had been violated.

5 Q. Doctor, how long did plaintiff suffer from this  
6 adjustment disorder?

7 A. About three weeks.

8 Q. And once the three weeks had past did she have  
9 any remaining problems?

10 A. They were minimal. She continued to work. She  
11 said she got along satisfactory with her husband. So it  
12 didn't interfere with her functioning. She continued to,  
13 however, worry about her husband. But she was no longer  
14 unable to work. As I said, her appetite returned. She  
15 was able to think clearly. She was no longer shaking.  
16 She was no longer suffering from lack of energy. The  
17 various symptoms that I described she had during the early  
18 part when she was at the height of her emotional distress.

19 Q. Based on what you had just mentioned, is that how  
20 you came to the conclusion that her emotional distress  
21 only lasted three weeks?

22 A. It's a combination of what she told me and also  
23 looking at the records of Dr. Lum, which confirmed this or  
24 were in agreement with it. He described a period of three  
25 weeks that based on what she told him and the way she

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1 appeared to him being off work and then said that and then  
2 released her to return to work.

3 In addition to that, she told me she became  
4 anxious to go back to work because she felt bored staying  
5 at home. So this is certainly not someone going back to  
6 work even though they're suffering and having difficulty  
7 functioning. She said she was bored.

8 Q. And did plaintiff ever mention to you or --  
9 Strike that.

10 Is it fair to say that plaintiff overcame her  
11 adjustment disorder without any psychiatric or  
12 psychological treatment?

13 A. She did not have any specific psychiatric or  
14 psychological treatment. She had some support from Dr.  
15 Lum. And she had some medication to help her sleep. But  
16 in a strict sense she didn't -- the illness did not rise  
17 to such severity and wasn't so prolonged that she needed  
18 to see a mental health professional.

19 Q. In your interview with plaintiff did you talk  
20 with her about what happened when the police came to her  
21 home?

22 A. Yes.

23 Q. And what did she tell you?

24 A. She said that she was at home alone. Her husband  
25 having gone out for dinner with her son. And that she was

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1 watching a television, her favorite television program,  
2 American Idol. And she was in the darkened room when she  
3 heard a loud banging on the door. As she put it, it was  
4 so loud you could hear it half a mile away. And she was  
5 startled by this.

6 She said she went to the door and opened it, and  
7 said that there were police there and that she asked them  
8 what was wrong. She said, according to her, two of the  
9 officers entered her home passing by either side of her.  
10 And she said there were two other police behind them who  
11 didn't enter. This is the first account that she gave to  
12 me of what had happened. She added a third policeman came  
13 to her house later on. She was aware of some others being  
14 present outside. And didn't know how many.

15 According to her, one of the officers, Officer  
16 Badua, said that he was looking for her son. And she said  
17 that she asked him if he had a paper, by which I assume  
18 she meant a warrant, to come into her home. And her  
19 statement is that he said my badge is enough.

20 When I asked her about this she said she had been  
21 a security employee for Wackenhut Security and she knew  
22 police needed to have a search warrant to enter your home.  
23 Then she went on to describe them asking her about where  
24 her son was. And telling her that he was -- They had a  
25 warrant for his arrest because of his involvement with

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1 drugs.

2 MR. SCHWEIGERT: I think we need to take a break  
3 for a minute, Doctor.

4 THE VIDEOGRAPHER: We're off the record at 3:38.  
5 (Recess taken.)

6 THE VIDEOGRAPHER: On the record at 3:46.

7 THE WITNESS: Ms. Coloyan said that the officer  
8 asked her repeatedly where her son Allan was. And then  
9 she became angered by this because she thought he didn't  
10 believe her. She told him he was fishing with her  
11 son-in-law in Alaska where he was then. Spends time in  
12 Hawaii and then goes on to the Philippines.

13 She said the police then proceeded to search her  
14 home without asking her permission. She said that  
15 according to Officer Badua, she should contact him if her  
16 son should come home. And if she didn't, she would be, as  
17 she put it, in big trouble.

18 And she added also that before the policemen left  
19 her home they said they had talked to her neighbors about  
20 Allan. She said she was extremely ashamed by this. And  
21 she was also incensed that they would have talked to her  
22 neighbors about this situation even before they came to  
23 her.

24 She said that after they left she got a glass of  
25 water. And after they left she began to shake. She had

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1 given the police her daughter-in-law's cell phone number  
2 in Alaska, and because she wanted to be cooperative and  
3 facilitate their being able to contact her son in Alaska,  
4 if that's what they wanted to do, by contacting him  
5 through her daughter-in-law. And she said that she was at  
6 the same time very frightened that they would send police  
7 to arrest her son in Alaska.

8 Later her husband came home. And she was very  
9 upset, crying, shaking. She said that her husband wanted  
10 to take her to the hospital, but she felt she didn't need  
11 to. Besides, she wanted to go to work the next day.

12 She did go to work, but she wasn't able to finish  
13 the day because she was light-headed. She was having  
14 trouble concentrating. She was feeling down. She was  
15 anxious. And her mind, as she put it, was all over the  
16 place. And was having trouble eating.

17 She also said that she got to thinking about what  
18 had occurred and became angry because of her house being  
19 entered without a warrant and the statement that,  
20 according to her, had been made by Officer Badua, that my  
21 badge is enough, referring to his coming into her house.  
22 She consulted with Dr. Lum, her family physician.

23 MR. SCHWEIGERT: I'm sorry. I'm starting to lose  
24 where -- You're giving a narrative right here, Doctor.  
25 What is the purpose of the narrative?

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1 MS. KAWAI: Actually I was just asking a

2 narrative.

3 Q. Let's stop you right there. I was just looking  
4 for a narrative as to what happened at home. Let me stop  
5 you right there.

6 In addition to what she told you in your  
7 interview of her what happened at her house, did you  
8 review any records of plaintiff's account of what had  
9 happened?

10 A. Yes.

11 Q. Did you find any inconsistencies in plaintiff's  
12 account of what had happened?

13 A. Yes.

14 Q. And what were those inconsistencies?

15 A. She -- Well, the first possible inconsistencies  
16 were on the date this happened that was registered on the  
17 complaint, the year and the month changing.

18 Another inconsistency was that in her deposition  
19 she initially said that she wasn't worried at all or  
20 concerned when you asked her about that, about her son  
21 having committed a crime. But she had told me that while  
22 the police were still there she was very worried about her  
23 son, was worried he might be arrested in Alaska. So there  
24 was an inconsistency in that area.

25 One point she said that she was nervous and shaky

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1 when the police were there. Another point she said it was  
2 after they left that it hit her and she really began  
3 shaking.

4 She at one point said that there were three  
5 policemen in the room, in the home. At another point she  
6 said there were four.

7 She in her deposition a couple of times said she  
8 invited themselves in, which would be different than them  
9 just entering without any kind of permission. To me when  
10 you invite yourself in you ask someone can I come into  
11 your home. And then if they said yes, you go in. And if  
12 they say no, you don't. And she was unhappy that they had  
13 invited themselves in. She made no mention of that in the  
14 interview with me. This came up in her deposition.

15 She contradicted herself a couple of times in the  
16 deposition in which she said she wasn't worried about her  
17 son and whether or not he had committed a crime. Whereas,  
18 in the interview with me this was a major focus of her  
19 concern and she was quite emotional about it. By that I  
20 mean the intensity with which she described that.

21 Q. Doctor, what is the significance to you of these  
22 inconsistencies?

23 A. Well, I think she was emotionally distressed at  
24 being informed that her son was, there was a warrant for  
25 her son's arrest. She was upset by hearing that her

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1 neighbors were told about this. She was upset by having  
2 the police there at all.

3 And I think that with these inconsistencies I  
4 don't think she was trying to be misleading in any way. I  
5 think it calls into question the accuracy of her memory  
6 for other things that happened when the police came.

7 Q. Is it important for a psychiatrist to perform an  
8 examination such as you did when assessing that person's  
9 mental or emotional health?

10 A. It's very important because there's so much  
11 information that you get from a person's tone of voice,  
12 their inflections, their facial expression, their body  
13 language, and a whole great number of cues that you get  
14 from people on an unconscious level that you can only have  
15 access if you are with the person and examining them in  
16 person.

17 It's true to such a degree that that is the  
18 importance of actually being with someone and examining  
19 them that the American Psychiatric Association has a  
20 policy that we should not publically make a diagnosis  
21 unless you've examined the person.

22 Q. If a psychiatrist weren't able to perform an in-  
23 person examination, what type of obstacles would that  
24 psychiatrist be presented with in making an assessment?

25 A. They would have to rely on other sources of  
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1 information. Possibly other medical records or reports.  
2 But they would have to do without all this other  
3 information of emotional tone, emotional emphasis, changes  
4 in speech, body language, all that information that you  
5 get when you're with someone that you don't get if you try  
6 to do an examination or file a report without seeing the  
7 person.

8 Q. In this particular case what was the importance  
9 for you in conducting this examination of plaintiff?

10 A. Well, without actually talking to her and being  
11 with her as she described how worried she was about her  
12 son, and how humiliated she felt about the neighbors, I  
13 think it would have been hard to tell the difference  
14 between how much of an emotional upset she had as a result  
15 of the warrant, having the police present, or having the  
16 neighbors informed that the police were looking for her  
17 son. It was with all this other information that it was  
18 quite clear what was the most upsetting for her. And that  
19 was, as I said before, her son being wanted for arrest,  
20 and the neighbors knowing, and also the police being  
21 there.

22 Q. Did the emotion that plaintiff showed in your  
23 interview with her confirm her concern for her son being  
24 wanted by the police?

25 A. I'm not sure if I understand you.

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1 Q. So in terms of the interview you had with  
2 plaintiff, based on your assessment of your in-person  
3 interview with plaintiff, did that confirm -- did that  
4 confirm that her concern was, on that day was for her son  
5 being wanted by the police?

6 A. That was the basis for forming that opinion.

7 Q. Are all the opinions that you give, that you have  
8 given here today made to a reasonable degree of medical  
9 probability?

10 A. Yes.

11 MS. KAWAI: Thank you, your Honor. I mean, thank  
12 you, Doctor.

## EXAMINATION

13 BY MR. SCHWEIGERT:

15 Q. Thank you, Doctor. If I can. I noticed, Doctor,  
16 when you go through your report and write your report you  
17 actually start off in the first paragraph talking about in  
18 the illegal search of my client's home without her consent  
19 by four police. Do you see that on the first page of your  
20 report of August 10, 2005? I'm on the first page, first  
21 paragraph.

22 A. Yes.

23 Q. Now, in fact, does she tell you that there were  
24 two policemen that immediately come into her house and two  
25 policemen at the door, and then those two policemen that

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1 were at the door, they themselves also do the search? Did  
2 you hear that at all during her interview?

3 A. Yes.

4 Q. By her testimony?

5 A. Yes.

6 Q. But then you're saying somehow it would change to  
7 three officers being in the house?

8 A. Yes.

9 Q. Did you comment to her about that inconsistency  
10 as you saw it to be, where at one time she's talking in  
11 terms of three and another time she's talking in terms of  
12 four?

13 A. No.

14 Q. And why would that be?

15 A. There was no reason to.

16 Q. Did you notice that as a conflict in her  
17 testimony?

18 A. I noticed it -- I don't remember if I noticed it  
19 at the time or afterwards I was reviewing my notes.

20 Q. Well, how do you do this? When you do this  
21 report, I assume you are not writing this report as Ms.  
22 Coloyan is sitting there in front of you. That you are  
23 doing this report from notes or perhaps journal entries or  
24 something at a later time after you've interviewed Ms.  
25 Coloyan?

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1 A. No. I take voluminous notes as we're talking.  
 2 And then I -- My practice is to dictate it and have it  
 3 transcribed. And usually the first draft is disorganized.  
 4 And so it goes to another draft when I put it in order.  
 5 And sometimes it's at that point that I may notice  
 6 inconsistencies that I didn't pick up on at the time that  
 7 the person saying gave me an inconsistent response.

8 Q. So how many drafts did you do, Doctor, on this  
 9 August 10th, 2005 report?

10 A. This probably was the third draft.

11 Q. And do you have the other drafts with you?

12 A. No. My practice is to discard them. They're  
 13 just working copies that I don't keep.

14 Q. And are these -- I mean, this is an independent  
 15 medical examination you're doing of Ms. Coloyan?

16 A. Yes.

17 Q. But independent is kind of a misnomer. You're  
 18 actually hired by the defense to do this examination,  
 19 correct? It's not like she's your patient?

20 A. No.

21 Q. She's sent to you by a request by the defense to  
 22 have her examined by you. Is that what you understand the  
 23 process to be?

24 A. Yes.

25 Q. And all of the monies that are paid for this

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1 examination and the writing of the reports and appearing  
 2 even today in this deposition are paid for by the defense?

3 A. Yes. Are you implying that when I -- my report  
 4 is therefore dictated by the fact that they're hiring me?

5 Q. Well, you are welcome to answer that, Doctor.

6 A. Well, I'm asking you.

7 Q. I just want to put the fact on the record as we  
 8 go through -- The jury in the end has to make a decision  
 9 which doctor to believe or which witness to believe. And  
 10 factors like financial payment can come into a juror's  
 11 mind as something that might temper someone's testimony.  
 12 It doesn't have to. But it's my duty as I go through your  
 13 deposition to try to establish all the factors so as to  
 14 give the jury the whole picture so they can make an honest  
 15 and complete evaluation. And that's all I'm trying to do  
 16 today.

17 A. Fine.

18 Q. So I notice though that there was disparity of  
 19 four versus three. And my question was whether you  
 20 pointed that out. And your response, it might have been  
 21 actually something you picked up in later edits of the  
 22 report?

23 A. Yes.

24 Q. I also noticed, Doctor, that when you write in  
 25 this report you actually sometimes darken words, or is it

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1 just my copy? Like an example would be on page 11 where  
 2 you're going over Dr. Lum's medical notes. Now, Dr. Lum  
 3 is who to Ms. Coloyan?

4 A. Her primary care physician.

5 Q. He is basically who? He's the guy that she would  
 6 go to for almost all of her medical treatment?

7 A. Yes.

8 Q. And so it would be logical if she's having a  
 9 problem to go to Dr. Lum if she's having some kind of  
 10 anxiety as a result of this case?

11 A. Yes.

12 Q. And you see by the notes that she does go to Dr.  
 13 Lum apparently the very next day after this incident?

14 A. Yes.

15 Q. Now, I noticed that there's certain times in your  
 16 writing here on Dr. Lum's note that you make it darker.  
 17 Was that your intent?

18 A. Yes.

19 Q. So that if there's emphasis it's something that  
 20 you are drawing attention to, not something that Dr. Lum  
 21 has written in the format that he has written?

22 A. That's correct.

23 Q. Now, as to what Dr. Lum did, I notice that in the  
 24 end of your report you indicate that he was ready to send  
 25 her back to work after two weeks. Do you see that?

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1 That's on page 34, Doctor. You actually indicated his  
 2 records indicate that she returned to work after two  
 3 weeks. And that's the second paragraph, at the end of  
 4 that second paragraph on page 34.

5 A. On page 34, which paragraph are you pointing?

6 Q. Yes, Doctor. I'm looking at the end of the  
 7 second paragraph where you start off, it's in parentheses,  
 8 Dr. Lum's records indicate she returned to work after two  
 9 weeks.

10 A. Yes.

11 Q. Now, did you talk to Dr. Lum at all for purposes  
 12 of doing this IME?

13 A. No, I did not.

14 Q. Is it fair to say that the only thing you did for  
 15 this IME would be to examine the patient, Ms. Coloyan, and  
 16 look at the documents that are indicated in your report  
 17 that you were given to look at?

18 A. Well, I wouldn't say it was the only thing as  
 19 though that was -- Kind of seems to diminish the amount of  
 20 work that went into this. There were a lot of documents  
 21 that I reviewed, including his, the various statements by  
 22 the other police officers involved, her own personnel and  
 23 medical records. So I kind of take issue with your  
 24 diminishing the amount of research that went into  
 25 preparing my opinions.

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1 Q. I'm sorry if that's what I said. I thought I  
2 said the only thing that you did. I did not mean to  
3 diminish your opinions.

4 You looked -- You examined Ms. Coloyan, and you  
5 looked at documents that were given to you to look at for  
6 purposes of doing your opinion?

7 A. Yes, that's correct.

8 Q. And the documents that you looked at are those  
9 documents identified on page 10?

10 A. Yes.

11 Q. I noticed included in the list of documents were  
12 a series of legal pleadings, like the complaints?

13 A. Yes.

14 Q. And actually the depositions of the police  
15 officers?

16 A. Yes.

17 Q. Now, do you have any idea what the purpose of  
18 giving you depositions of police officers would be for  
19 purposes of you doing a medical examination of this case?

20 A. Well, the accuracy of Ms. Coloyan's account as to  
21 what actually occurred to upset her is an important issue  
22 here.

23 Q. Are you looking at the police officers'  
24 accounting as a truthful accounting?

25 A. I'm looking for consistency and how they match up  
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1 with her account.

2 Q. So did you draw some significance that they're at  
3 odds with her account?

4 A. I drew some significance from the fact, more  
5 significance from the fact that they were consistent. And  
6 the fact that there was a remark that one of them made we  
7 would have had a SWAT team if they were going to enter  
8 without permission because of their safety as being  
9 significant. So I placed a fair amount of credence on  
10 those reports based on that fact as well as the  
11 consistency.

12 Q. So you relied upon the police officers in part in  
13 making your prognosis in this case?

14 A. Not my prognosis. I relied in part on the police  
15 officers' account in terms of forming an opinion as to how  
16 likely her accuracy would be about her description of what  
17 occurred.

18 Q. And based on that you formed an opinion from what  
19 the police officers are saying in their depositions as to that  
20 accuracy?

21 A. I think you're over-simplifying it.

22 Q. Help me.

23 A. There were a number of developments that went  
24 into my forming an opinion about her accuracy or possible  
25 inaccuracy I should say. There were her own

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1 inconsistencies. And there was, on the other hand, in  
2 addition to that, the consistency of the officers and the  
3 statement that they would not risk putting themselves at  
4 risk by entering without a SWAT team behind them.

5 Q. I notice you went through every police officer  
6 except Neil Pang. Is there a reason you left Neil Pang  
7 out?

8 A. There was nothing in there that was relevant.

9 Q. In Neil Pang?

10 A. That I could find, in my opinion.

11 Q. And the highlighted words that you do in the  
12 police reports are your drawing significance to that?

13 A. Yes.

14 Q. Let's take the one officer, Badua. And I'm  
15 talking now in terms of medical significance. You see  
16 that Officer Badua, you've highlighted words, looks like,  
17 to the effect --

18 A. What page are you?

19 Q. I'm sorry. Page 13.

20 A. Go on.

21 Q. I noticed that you are focusing on, looks like  
22 the words about being invited in. I don't mean to  
23 overstate it. But looks like that's the purpose of  
24 drawing emphasis to that in Badua knocks on the door and  
25 she invited him in, words to that effect.

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1 A. That's his account.

2 Q. You are putting that into emphasis because you  
3 want to make it clear that his opinion that he was invited  
4 in?

5 A. Yes.

6 Q. You understand Ms. Coloyan says that that didn't  
7 happen?

8 A. Yes.

9 Q. You certainly picked that up from your interview  
10 of her?

11 A. Well, it's throughout my history of present  
12 illness. And it's also referred to and also highlighted  
13 as this is highlighted in her deposition.

14 Q. Now, you've also made it clear that you don't  
15 believe Ms. Coloyan is intentionally misrepresenting  
16 facts?

17 A. That's correct.

18 Q. Are you suggesting then that she did do what Mr.  
19 Badua is saying she did but just forgot about it because  
20 of the exigency of the situation?

21 A. I wasn't there so I don't know. But I think  
22 there's a very significant possibility that that occurred  
23 based on the other mistakes she made about what occurred,  
24 like the number of police officers that were in her house,  
25 whether they just came in or invited themselves in, and

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1 **some of the other inconsistencies that I referred to.**

2 Q. Are there any other inconsistencies that you  
3 haven't referred to that were on your mind to help you  
4 want to highlight these words?

5 A. **Not that I can think of.**

6 Q. Now, you were given the entire depositions of all  
7 these officers, right?

8 A. **Yes.**

9 Q. And yet you selected just these portions. And, I  
10 take it, you selected these portions for a reason?

11 A. **Yes.**

12 Q. And what was that reason?

13 A. **I thought they were relevant to the questions  
14 being asked.**

15 Q. Meaning?

16 A. **Meaning were they invited in or did they go in  
17 uninvited. And I was looking, as I said, to see if there  
18 was consistency in their account.**

19 Q. Have you done cases involving police officers  
20 before where there's a number of police officers  
21 testifying about a particular incident?

22 A. **Yes.**

23 Q. And have you found -- Have you ever heard of a  
24 term called the code of silence?

25 A. **Yes.**

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1 Q. What do you understand --

2 MS. KAWAI: Objection. Relevance. Just for the  
3 record.

4 BY MR. SCHWEIGERT:

5 Q. What do you understand the code of silence to be?

6 MS. KAWAI: Same objection. Sorry.

7 THE WITNESS: The code of silence occurs in all  
8 kinds of settings. When there are groups of people  
9 working together in which people agree not to acknowledge  
10 that something has occurred, or to portray as having  
11 occurred that didn't. They agree to the same account.

12 That happens on the waterfront. It happens in the  
13 military. It happens with police officers. This kind of  
14 phenomena occurs in a variety of settings.

15 BY MR. SCHWEIGERT:

16 Q. For purposes of evaluating these police officers'  
17 testimony, did you interview any of these police officers?

18 A. **No.**

19 Q. Did you do any other reports about this  
20 particular incident but for those documents you've  
21 identified in your report?

22 A. **No.**

23 Q. I also picked up that you looked at this lady as  
24 a hard working lady. Is that a fair statement to make?

25 A. **I would say she's a very hard working lady.**

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1 Q. In fact, the night after having had this  
2 experience with the police she's still going to work the  
3 next morning and refusing hospitalization that night?

4 A. **Yes.**

5 Q. What do you draw as far as any significance from  
6 that as far as the kind of grit that this lady might have?

7 MS. KAWAI: Objection. Vague and ambiguous.

8 BY MR. SCHWEIGERT:

9 Q. Do you have any question about my question?

10 A. **Well, just to take it a step further. At one  
11 point she was working two 40 hour a week jobs and stopped  
12 because the strain was too great. And, as you say, she  
13 went to work the next day even though she was very upset.  
14 I take that to be a reflection of her determination and  
15 her conscientiousness about her work. And I think at that  
16 point grit is a good word.**

17 **And at that point I don't think she realized how  
18 much this incident affected her. I don't think she needed  
19 hospitalization. Her husband thought she probably should  
20 stay home. She found as a matter of fact she wasn't up to  
21 going to work.**

22 Q. If she would have come to you that day would you  
23 have told her to stay home in view of the symptoms that  
24 she's describing?

25 MS. KAWAI: Objection. Calls for speculation.

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1 THE WITNESS: Given the symptoms, can't sleep,  
2 I'm worried, I can't concentrate. Particularly telling,  
3 her not being able to keep her mind on her work. A person  
4 can do a lot if they're not sleeping well, if they're not  
5 eating well. But once your thinking becomes affected so  
6 that you can't concentrate, then I think it's hard to do  
7 an effective job.

8 BY MR. SCHWEIGERT:

9 Q. So there's no doubt about it in your mind that  
10 she did suffer an adjustment disorder as a result of this  
11 incident?

12 A. **There's no doubt.**

13 Q. And that includes from the police actually going  
14 through her home? I know you've ranked it third on the  
15 list. But certainly one of the things that she suffered  
16 an adjustment disorder from was the police going through  
17 her house?

18 A. **I would say that that was a minor element, but it  
19 was certainly one of them.**

20 Q. So it does fall within the number of those things  
21 that contributed to her adjustment disorder that you're  
22 seeing when you saw her August, I guess, of 2005?

23 A. **Yes.**

24 Q. You put it at the bottom of the list?

25 A. **Yes.**

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1 Q. But now you're forming an opinion based on her  
2 statements to you during this interview that seem to  
3 concentrate in large part about her son as to why you are  
4 putting the son at the top of the list?

5 A. **It was her statements and the manner in which she**  
6 **made them, the feeling that was in her voice and in her**  
7 **demeanor, the number of times that she came back to that**  
8 **as a primary issue for her, the way in which it affected**  
9 **her relationships with people she was close to. All of**  
10 **that.**

11 Q. Now, as you're doing this interview, Doctor, help  
12 me with this, are you doing this interview -- These are  
13 your questions and her answers, right?

14 A. **(Witness nods head.)**

15 Q. There is a live you talking to her kind of an  
16 interview as far as developing this history and drawing  
17 upon the fact that she seems to be in large part hurt  
18 about the son?

19 A. **Yes.**

20 Q. So how long would that interview have lasted?

21 A. **About two to two and a half hours.**

22 Q. And this is the live interview between you and  
23 her?

24 A. **Yes.**

25 Q. And during that two and a half hours she's

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1 talking about the incident, is she talking about it like  
2 it's just happened, or is she talking about it like it's  
3 now two and a half years later?

4 A. **Somewhere in between.**

5 Q. She's not coming to you like she went to Dr. Lum  
6 for immediate treatment?

7 A. **No. Sometimes people come in and give an account**  
8 **of something that's happened two years ago and there is a**  
9 **quality about it as though it happened yesterday.**

10 Q. Did you pick that up --

11 A. **But that was not the indication with her.**

12 Q. She's basically --

13 A. **So she's put some distance between herself and**  
14 **the incident. At the same time, it had a freshness to it,**  
15 **a vividness to it that was, didn't seem like it was two,**  
16 **two and a half years ago.**

17 Q. Did you see she's still suffering from it?

18 A. **No. Well, when she talks about it she**  
19 **experiences distress, and other times she doesn't. So**  
20 **that she said, for instance, that she was upset at the**  
21 **prospect of coming to this interview with me. And**  
22 **reminders of something that's been unpleasant. That**  
23 **doesn't mean she's suffering on an ongoing basis.**

24 **When something arises like this interview where**  
25 **she's going to go into detail, it causes her to become**

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1 **upset again, not to the same degree, of course, as at the**  
2 **time that this first occurred. I mean, she wasn't saying**  
3 **I couldn't eat, I couldn't concentrate, I couldn't work.**  
4 **She was saying I was upset.**

5 Q. I missed that. I'm sorry.

6 A. **I wanted to differentiate between the intensity**  
7 **and the effect of her emotional disturbance when she was**  
8 **suffering from an adjustment disorder at the time that it**  
9 **occurred where she couldn't sleep, her appetite was**  
10 **affected, she couldn't concentrate, she couldn't work, she**  
11 **was shaky.**

12 Q. At that point she's in adjustment disorder  
13 period?

14 A. **Yes. When she came to me she was again**  
15 **emotionally upset, but it was in her distress. She was**  
16 **not -- It was not nearly the kind of distress that was**  
17 **present at the time when she had the adjustment disorder.**  
18 **I don't want to give the false impression that a reminder**  
19 **such as coming to this interview re-evoked the whole**  
20 **illness all over again. It's just an unpleasant memory.**

21 Q. Be like that neighbor situation where you talked  
22 about where you are able to, it would be a bad thing that  
23 happened to you, but for your neighbor there was an  
24 actual -- Let's scratch that.

25 A. **Okay.**

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1 Q. I don't think I'm going the right spot on that.

2 A. **But you got the idea.**

3 Q. I got the idea. Thank you, Doctor.

4 You looked at Dr. Lum's records, right?

5 A. **Yes.**

6 Q. Okay. You have him then basically letting her to  
7 return to work within two weeks, according to your notes?

8 A. **Yes.**

9 Q. Can you take a look -- We'll mark these next in  
10 order. I don't have the full set of documents, but enough  
11 to be able to get through this part. Your copy, we'll  
12 mark that as Exhibit 2 for this depo.

13 MS. KAWAI: Yes.

14 BY MR. SCHWEIGERT:

15 Q. We'll draw your attention down there. I just  
16 attached four pages because it looks like four pages would  
17 get us through this particular task. You notice that  
18 there's a June 4th entry, 2003?

19 A. **Yes.**

20 Q. Now, you remember looking at these records. Does  
21 this look like the records that you looked at, a portion  
22 of those records you looked at from Dr. Lum?

23 A. **Yes.**

24 Q. Now, you notice you weren't there. She didn't  
25 come to you for treatment. She goes to her doctor. I

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1 guess that's the doctor she's always gone to. And she  
2 doesn't mention anything about her son in this report to  
3 the doctor. Do you have any explanation of why that would  
4 be so in view of what you were picking up two years later?

5 MS. KAWAI: Objection. Calls for speculation.

6 MR. SCHWEIGERT: Okay.

7 Q. You see what I'm saying, Doctor?

8 A. Yes.

9 Q. Your explanation for why she would not mention  
10 what you picked up with the preoccupation of her son?

11 A. **She was deeply embarrassed and humiliated to the**  
12 **point she wouldn't talk about this with her brothers and**  
13 **sisters. I think she probably had the same feelings to**  
14 **even a greater extent with her, with Dr. Lum. So instead**  
15 **it was probably more -- less upsetting to her to just say**  
16 **there was trouble with police instead of being specific**  
17 **and saying my son is wanted for arrest on drug charges.**  
18 **It would be much more difficult to acknowledge.**

19 Q. That would be your speculation as to why she  
20 didn't do it?

21 A. **That's my speculation. That's a reasonable one.**

22 Q. Would you say to a reasonable degree of medical  
23 certainty that is a fact?

24 A. No.

25 Q. Then you noticed that at this point in time she

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1 is given some drugs. Is Diazepam valium?

2 A. Yes.

3 Q. Did you see her being given valium as a common  
4 drug or is this something that's specific for this  
5 particular episode in her life, this giving her of  
6 Diazepam to treat her anxiety?

7 Did you notice from reviewing her records up to  
8 this point in time, June 4th, she'd been given Diazepam as  
9 a regular course of treatment for whatever might be ailing  
10 her? Do you understand my question?

11 A. Yes.

12 MS. KAWAI: Objection. Lacks foundation.

13 BY MR. SCHWEIGERT:

14 Q. Is it fair to say this is the first time you see  
15 Diazepam being prescribed for anxieties that you can  
16 recall?

17 A. **I don't remember. In any event, it's an**  
18 **appropriate medication to prescribe for anxiety and**  
19 **sleeplessness. And it's commonly used for that purpose.**

20 Q. And the doctor is -- It's not suggesting, is it?  
21 It's just an actual directive, no work for the next three  
22 days? You read that as a directive?

23 A. **No, I don't know whether that's a directive or a**  
24 **summary.**

25 Q. For whatever it is in his notes as the period of

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1 time he thinks she should stay away from work?

2 A. **Or a conclusion that she stayed away for three**  
3 **days.**

4 Q. From what you read of these symptoms does that  
5 seem like appropriate form of treatment?

6 A. Yes.

7 Q. Now, the next treatment that I see is June 9th.

8 Is that what your records reflect?

9 A. Yes.

10 Q. And again I see she's taking valium. I guess  
11 this is again for her anxiety?

12 A. **And to help her sleep.**

13 Q. And to help her sleep. Does she mention anything  
14 in here about anything about her son?

15 A. **No. There's no mention of her son, the police,**  
16 **her neighbors. Just symptoms.**

17 Q. Now, does the doctor make -- I see that he's got  
18 this A, P. Do you see the A, P on the left margin there?

19 A, headache, HTN. P, got some other words. Do you know  
20 what A is in this doctor's notes? You see the A?

21 A. **I think A probably stands for assessment.**

22 Q. Okay. Is that part of the old SOP outline?

23 A. Yes.

24 Q. And so his assessment was headaches and HTN. Do  
25 you know what that is?

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1 A. **Hypertension probably.**

2 Q. Did you notice whether she had suffered from  
3 hypertension as a regular course of problems for  
4 Ms. Coloyan or something that's being brought on by this  
5 episode with the police?

6 MS. KAWAI: Objection. Calls for speculation.  
7 Lacks foundation.

8 THE WITNESS: The records reflect that she had  
9 hypertension as far back as April 2003, and possibly even  
10 before that.

11 BY MR. SCHWEIGERT:

12 Q. Did you see before this, like within months of  
13 this incident, two months or three months before this  
14 incident, from your notes, did you see that she was  
15 suffering from hypertension?

16 A. Yes.

17 Q. When was the most recent before June 3rd that you  
18 see her suffering from hypertension?

19 A. **The previous visit, May 22nd, the one before**  
20 **that, April 17th, and the one before that, April 1st.**

21 Q. And is she prescribed valium for that  
22 hypertension?

23 A. **No. She's prescribed a specific**  
24 **anti-hypertensive medication.**

25 Q. So is she basically a hypertensive lady, is that

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1 what you're picking up from these notes?

2 **A. She has preexisting hypertension, and it's**  
3 **severe.**

4 **Q.** And it's severe?

5 **A. Uh-huh.**

6 **Q.** And she's been treated for it for a while?

7 **A. Yes.**

8 **Q.** Is that why you in the end concluded for this

9 person these things could have caused all the more

10 problems? Do you know what I'm talking about?

11 **A. I don't think they're related. I think this**

12 **incident would have caused her all the more difficulty**

13 **because of her temperament, her need to present herself in**

14 **an excessively good light, as reflected in the MMPI, her**

15 **high standards for herself, her sensitivity.**

16 **Q.** What other people think about her, such as her

17 neighbors or her family, all of those things would have

18 made it more upsetting to her than the average individual?

19 **A. I don't think any of those things are related to**

20 **her hypertension.**

21 **Q.** Now, I notice though then that she's still

22 prescribed the valium on this June 9th visit?

23 **A. Yes.**

24 **Q.** And now, correct me if I'm wrong, this seems to

25 be the doctor making a direct -- Do you know what P stands

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1 for?

2 **A. Plan, I think.**

3 **Q.** So his plan is I do not feel she's capable of

4 returning to work at this time. That seems to be the

5 doctor's own notes. Is that what you --

6 **A. That looks to be his opinion.**

7 **Q.** And he's actually saying I want her to stay off

8 work for at least one, I'm assuming one more week?

9 **A. It looks that way.**

10 **Q.** Now, that makes two weeks that she's missed so

11 far?

12 **A. June 3rd to June 16th.**

13 **Q.** So it's two weeks?

14 **A. Yes.**

15 **Q.** Now, she comes again on June 13, it looks like

16 recheck?

17 **A. Yes.**

18 **Q.** And I notice on this one that at the end of it

19 he's writing, and again it's under the P, so we've

20 identified we think to be plan, he's saying I feel she

21 should stay off work for this one week and if doing well

22 return next week. And he's writing that, it appears to be

23 on June 23rd. Does that seem right to you?

24 **MS. KAWAI:** Objection. Misstates the document.

25 **BY MR. SCHWEIGERT:**

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1 **Q.** I'm looking at June 22nd, 23rd, 03. Is that what

2 you are looking at that to be, Doctor?

3 **MS. KAWAI:** Objection. Calls for speculation.

4 **BY MR. SCHWEIGERT:**

5 **Q.** Do you have any idea what he's talking about?

6 **A. I thought that was all part of the June 13th**

7 **note. I was confused by the writing in there, June 4th,**

8 **and then there's BTW, 6-23-03, and then 6-22-03. I didn't**

9 **quite know what to make of that.**

10 **Q.** You interpreted that to be up at the June 13th

11 note?

12 **A. Yes.**

13 **Q.** And didn't qualify that you really weren't sure

14 about that because it could very well be another entry?

15 **A. I wasn't sure at the time.**

16 **Q.** Anyway, he's saying, according to his notes, he

17 wants her to stay at home for one more week at least?

18 **A. It looks as though he wants her to stay home for**

19 **a week after -- The way I interpret that, as of June 13th,**

20 **which would put her back to work by the 20th.**

21 **Q.** You're aware she actually had a doctor's note,

22 I'm sure it's been shown to you, where she stays out for a

23 full three weeks. Did you ever see that document in the

24 documents that were given to you?

25 **A. I don't remember.**

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1 **Q.** But staying out three weeks for this kind of

2 adjustment disorder would not seem unreasonable?

3 **A. No.**

4 **Q.** In fact, knowing her psyche, probably other

5 people might have stayed out longer, but she's the kind of

6 person that wants to get back to work?

7 **A. I think most people would have gone back to work**

8 **the next day which wouldn't have been as traumatized or**

9 **upset by this. She's a more emotional, reactive**

10 **individual, which doesn't take away from her grit and**

11 **determination. I think she has a tendency to think about**

12 **things, to worry a lot more. She's a little more upset**

13 **than the average individual.**

14 **Q.** Did you ever see in the notes where the doctor,

15 Dr. Lum is prescribing her valium for anything other than

16 this disorder, this adjustment disorder, as a result of

17 this incident?

18 **A. I don't remember.**

19 **Q.** So do you see on July 11th a prescription for

20 valium?

21 **A. Yes.**

22 **Q.** Did you draw any significance from that?

23 **A. She may still have been having some difficulty**

24 **sleeping.**

25 **Q.** Would that have been attributable to this

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1 adjustment disorder?  
 2 **A. Possibly and possibly not. Because she makes no**  
 3 **reference to the problems with the incident on the 3rd.**  
 4 **And she's had valium in the past for problems with sleep.**  
 5 **She has a long history of difficulty with sleep and/or**  
 6 **sleeplessness. Or has had, as I recall -- I'm not certain**  
 7 **whether she's had valium in the past or not, but she's had**  
 8 **problems with sleep in the past.**

9 Q. There was valium being given for anxiety?  
 10 MS. KAWAI: Objection. Calls for speculation.  
 11 BY MR. SCHWEIGERT:

12 Q. Is it fair to say you don't know what that  
 13 prescription for valium was meant to treat? If you do,  
 14 I'd like to know what your opinion is.

15 **A. No, I don't.**

16 Q. And do you see on July 24th there's again a  
 17 mention of valium at night as needed for insomnia?

18 **A. Yes.**

19 Q. Do you have any idea that this would not be as a  
 20 result of the adjustment disorder that she suffered from?

21 **A. It could have been related to the adjustment**  
 22 **disorder or it could have been related to something else.**  
 23 **We don't know.**

24 Q. Don't know?

25 **A. (Witness nods head.)**

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1 Q. Now, when she's talking to you, Doctor, about her  
 2 son, you're saying she's talking about it not in the  
 3 format of an adjustment disorder anymore? You've got her  
 4 cured from that adjustment disorder, right? Would you say  
 5 she's cured from that adjustment disorder?

6 **A. Yes.**

7 Q. But yet you mention in your report in places like  
 8 she still seemed to talk about hearing noises outside and  
 9 being alarmed at that. Have I got your report correct?  
 10 Do you remember making mention of that? There were  
 11 different things, like she worried about sounds outside  
 12 and she worried about things that, slight noises at night.  
 13 Look at page 4, Doctor. Slight noises at night awaken  
 14 her. She's made statements someone might be watching.

15 **A. Which paragraph?**

16 Q. First paragraph. I'm so sorry.

17 How long did those slight noises at night still  
 18 awaken her? Do you know where I'm at, Doctor?

19 **A. Yes. I didn't ask her, so I don't know how long**  
 20 **she was being awakened by slight noises. She said that she**  
 21 **was upset by strange cars or rather -- Yeah, I'm looking**  
 22 **at the sentence beyond that. When a strange car would**  
 23 **drive into her cul-de-sac, pause for a moment, and then**  
 24 **drive out again, she was concerned that someone might be**  
 25 **watching to see whether her son Allan had returned. She**

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1 **said that lasted for several months.**

2 Q. Did she put a number on that month? Could have  
 3 been a year?

4 **A. She said a few months. Not a year.**

5 Q. Does that seem like what we're talking about,  
 6 slight noises waking her up and statements about someone  
 7 might be watching, these are her words, right?

8 **A. Yes.**

9 Q. So that --

10 **A. It's consistent with that. But she didn't say**  
 11 **those things had lasted for several months. The thing**  
 12 **that bothered her, that someone might be coming to look**  
 13 **for her son Allan.**

14 Q. But you made a note about slight noises at night  
 15 awaken her. I'm assuming you drew enough significance  
 16 from that statement to put it in your report?

17 **A. Yes.**

18 Q. That was of some significance?

19 **A. Certainly.**

20 Q. Were you keeping that thought in mind that she is  
 21 awakened by noises outside, did you draw any significance  
 22 from the fact of how she opened the door when there's that  
 23 loud pounding by the police? Do you remember her  
 24 statements when she was asked why she would open the door  
 25 to loud pounding? Do you remember her saying something to

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1 the effect she doesn't have an enemy in world, she wasn't  
 2 worried about things?

3 **A. Yes.**

4 Q. Did that stick in your mind that she said such a  
 5 thing? Here's a woman alone in her home at night, loud  
 6 bounding on the door, willing to open the door.

7 **A. That surprised me.**

8 Q. That surprised you. Now, she's the kind of woman  
 9 who hears slight noises at night and she's awakened by that?

10 **A. I think you are kind of overdrawing it when she's**  
 11 **the kind of woman. As you know, there's been this kind of**  
 12 **far reaching change in her personality from someone who is**  
 13 **without, in fact what I would say the usual kind of**  
 14 **caution in opening the door to strangers pounding on it in**  
 15 **the night to being alarmed by strange cars. But she had a**  
 16 **specific issue on her mind, and that was the safety, or**  
 17 **rather the status of her son.**

18 Q. Now, this would be your talking to her -- What  
 19 was the date of your exam, July -- August -- I'm sorry.

20 **A. July 12th, 2005.**

21 Q. So almost a little over two years from the day of  
 22 the incident?

23 **A. Yes, yes.**

24 Q. You're aware that her son actually came back to  
 25 town and went to the police station within a couple of

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1 months, and there was no warrant at the Kalihi police  
2 station for him? Are you aware of that?

3 **A. It's in my report.**

4 **Q.** And yet she's telling you to this date this was  
5 the most important thing on her mind as she is talking to  
6 you?

7 **A. At this time. Not at this time. Not at the time  
8 she's being examined by me.**

9 **Q.** It seems like the most important stressor to you,  
10 as I picked up your testimony, is she's telling you her  
11 accounting of the events?

12 **A. At the time that the events occurred, yes.**

13 **Q.** How much time have you spent on this case so far?

14 **A. I've spent about two to three hours preparing for  
15 today. And about eighteen hours and ten minutes to  
16 prepare the report.**

17 **Q.** Now, you mentioned that you worked with police  
18 officers on other occasions?

19 **A. Yes.**

20 **Q.** Can you give me -- Who hired you at that point in  
21 time? How many times was this, first of all?

22 **A. There have been, I would say, about four or five  
23 times over the years that I worked evaluating policemen.**

24 **Q.** Can you give me the circumstance that you would  
25 have been working? Would it have been the city that hired

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1 you to evaluate a police officer, or was it a civil rights  
2 case where someone is going after a police officer? Or  
3 what would be the circumstances?

4 **A. Some of them were for injuries.**

5 **Q.** On the job type?

6 **A. Yes. Workers' compensation type injuries,  
7 emotional aspect of a physical injury or specific  
8 emotional trauma as a result of something that happened on  
9 the job. There have been a couple of cases where someone  
10 was suing the city and county and I examined them. But I  
11 didn't examine the police involved. But there were police  
12 involved. And I don't remember the specifics of it.**

13 **Q.** Did you put the different police reports in that  
14 report as you recall?

15 **A. I don't remember.**

16 **Q.** Aside from those two cases, can you think of any  
17 other case where you've been involved with police?

18 **A. As I said, there are probably, but my memory  
19 really isn't good on this.**

20 **MR. SCHWEIGERT:** Thank you very much, Doctor.  
21 Let me just take one quick look at my notes because I'm  
22 catching this -- You're going to give me -- You have your  
23 results of the MMPI. They were in there?

24 **A. Yes.**

25 **Q.** And can different doctors look at MMPI's and come

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1 up with different conclusions?

2 **A. Yes. And the method I use is as follows. The  
3 MMPI, the Minnesota Multiphasic Personality Inventory, is  
4 a psychological test, paper and pencil, with yes and no  
5 answers. Consists of 567 questions. And it's the most  
6 widely used psychological test in the world. And it's  
7 used in all kinds of settings for psychiatric emotional  
8 illness, for forensic settings, for personnel. Has many  
9 uses.**

10 **It was developed at the University of Minnesota  
11 by a man named Butcher. And Dr. Butcher and his  
12 associates have a system for scoring and interpreting the  
13 MMPI. And it's their system that I rely on for  
14 interpreting and evaluating MMPI's. Other doctors can  
15 administer the 567 questions, look at the answers and have  
16 their own interpretations. And there may be variation.  
17 However, the method I use is the most widely used among  
18 mental health professionals.**

19 **Q.** Let me ask it this way. On your Axis I you draw  
20 a conclusion that she is now in complete remission. This  
21 is the anxiety disorder?

22 **A. The adjustment disorder, that's right.**

23 **Q.** Thank you.

24 **And so if a loud noise outside now startles to  
25 the extent to go look and see what it is, or there are**

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1 other neighborhood disturbances, knowing the kind of  
2 person she was, are you saying to a reasonable degree of  
3 medical certainty that you know she's in complete  
4 remission, she's not suffering from like the event  
5 happening?

6 **Let me put it another way, Doctor. Suppose  
7 someone was to come pound on her door right now. Startles  
8 the living daylights out of her. Would you say that that  
9 would be at all something to do from this particular  
10 incident with the police or just a totally new incident?**

11 **MS. KAWAI:** Objection. Calls for speculation.

12 **BY MR. SCHWEIGERT:**

13 **Q.** You know what I'm saying? She still has trouble  
14 this way. And I want to know whether your conclusion  
15 she's totally in remission, and whatever trouble she's  
16 having today would not have been caused by this incident  
17 from June the 3rd?

18 **MS. KAWAI:** Same objection.

19 **THE WITNESS:** I can only speculate. She had  
20 trouble sleeping for years before this. And I don't know  
21 whether she was disturbed by noises that time too. I  
22 didn't ask her. That might have been the reason for  
23 sleeplessness in the past.

24 **At the present time if someone were to bang on  
25 her door, not in the middle of the night, 7 p.m. is hardly**

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1 that, but still, if someone were to bang on her door, my  
 2 hunch is, and this is a speculation, she would have looked  
 3 to see who it was first. And if it were police, she would  
 4 probably be frightened again, just as she was the first  
 5 time. Depending on what they were there for, she would  
 6 probably settle right down, or might have a major upset.  
 7 We don't know. It's a lot of speculation.

8 But I don't believe that she has been scarred  
 9 emotionally in such a way so that any kind of reminder is  
 10 going to re-evoke the adjustment disorder such as occurs  
 11 in post-traumatic disorders where a veteran hears a car  
 12 backfire, thinks he's back in Vietnam, and dives under a  
 13 car for cover. It's nothing like that.

14 As she said, when she has reminders she gets  
 15 upset for a while, like when she got a reminder to come to  
 16 this interview, and then it passes.

17 MR. SCHWEIGERT: Thank you very much, Doctor.  
 18 We're done.

19 THE VIDEOGRAPHER: We're off the record and the  
 20 end of the deposition at 4:49.

21 (Exhibits 1 & 2 were marked for identification.)  
 22  
 23  
 24  
 25

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1 I, BYRON ELIASHOF, M.D., do hereby certify that I have  
 2 read typewritten pages 1 through 77, inclusive, and  
 3 corrections, if any, were noted by me and the same is now  
 4 a true and correct transcript of my testimony.

5 Dated: \_\_\_\_\_  
 6  
 7  
 8

9 \_\_\_\_\_  
 BYRON ELIASHOF, M.D.

10 Signed before me this \_\_\_\_\_  
 11 day of \_\_\_\_\_ 2006.  
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1 STATE OF HAWAII )  
 ) SS.

2 CITY AND COUNTY OF HONOLULU )

3 I, SHEILA BRITT LIPTON, CSR NO. 257, Notary Public  
 4 in and for the State of Hawaii, do hereby certify:

5 That on February 23, 2006, 2:35 p.m. appeared  
 6 before me BYRON ELIASHOF, M.D., the witness whose  
 7 deposition is contained herein; that prior to being  
 8 examined, the deponent was by me duly sworn; that the  
 9 deposition was taken in machine shorthand by me and was  
 10 thereafter reduced to typewriting under my supervision;  
 11 that the foregoing represents, to the best of my ability,  
 12 a correct transcript of the deposition had at that time;

13 That the deponent was notified through counsel, by  
 14 mail or by telephone to appear and sign; that if the  
 15 deposition is filed without signature, either the reading  
 16 and signing of the deposition were waived by stipulation  
 17 of all parties or the deponent has failed to appear, and  
 18 the deposition is therefore filed pursuant to Rule 30(e),  
 19 Hawaii Rules of Civil Procedure.

20  
 21 Date: \_\_\_\_\_  
 22  
 23  
 24  
 25

\_\_\_\_\_  
 SHEILA BRITT LIPTON, CSR NO. 257  
 Notary Public, State of Hawaii  
 My Commission Expires: 5-9-2009

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